

House File 172 - Introduced

HOUSE FILE 172

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 52)

A BILL FOR

1 An Act relating to corporations' powers and duties, document
2 filings, meetings, mergers, voting procedures, and the
3 functions of directors and officers.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 490.501, subsection 2, paragraphs b and
2 c, Code 2015, are amended to read as follows:

3 b. A domestic corporation, domestic limited liability
4 company, or not-for-profit domestic corporation whose business
5 office is identical with the registered office.

6 c. A foreign corporation, foreign limited liability company,
7 or not-for-profit foreign corporation authorized to transact
8 business in this state whose business office is identical with
9 the registered office.

10 Sec. 2. Section 504.111, Code 2015, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 12. Whenever a provision of this chapter
13 permits any of the terms of a plan or a filed document to be
14 dependent on facts objectively ascertainable outside the plan
15 or filed document, all of the following provisions apply:

16 a. The manner in which the facts will operate upon the terms
17 of the plan or filed document shall be set forth in the plan or
18 filed document.

19 b. The facts may include any of the following:

20 (1) Any of the following that is available in a nationally
21 recognized news or information medium either in print or
22 electronically: statistical or market indices, market prices
23 of any security or group of securities, interest rates,
24 currency exchange rates, or similar economic or financial data.

25 (2) A determination or action by any person or body,
26 including the corporation or any other party to a plan or filed
27 document.

28 (3) The terms of, or actions taken under, an agreement to
29 which the corporation is a party, or any other agreement or
30 document.

31 c. As used in this subsection, all of the following apply:

32 (1) "*Filed document*" means a document filed with the
33 secretary of state under any provision of this chapter except
34 subchapter XV or section 504.1613.

35 (2) "*Plan*" means a plan of entity conversion or merger.

1 Sec. 3. Section 504.302, Code 2015, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 16A. Serve as a trustee of a trust of which
4 the corporation is a beneficiary.

5 Sec. 4. Section 504.501, subsection 2, paragraphs b and c,
6 Code 2015, are amended to read as follows:

7 b. A domestic business corporation, domestic limited
8 liability company, or domestic nonprofit corporation whose
9 business office is identical to the registered office.

10 c. A foreign business corporation, foreign limited
11 liability company, or foreign nonprofit corporation authorized
12 to transact business in this state whose business office is
13 identical to the registered office.

14 Sec. 5. Section 504.701, subsection 1, Code 2015, is amended
15 to read as follows:

16 1. A Except in the case of a corporation with members
17 that holds meetings only of delegates and not of the members,
18 a corporation with members shall hold a membership meeting
19 annually at a time stated in or fixed in accordance with
20 the bylaws. The articles of incorporation or bylaws of a
21 corporation with members that holds meetings only of delegates
22 and not of members may provide for meetings of delegates to be
23 held less frequently than annually but at least once every six
24 years.

25 Sec. 6. Section 504.712, subsection 1, Code 2015, is amended
26 to read as follows:

27 1. ~~The right of the members of a corporation, or any class~~
28 ~~or classes of members, to vote may be limited, enlarged, or~~
29 ~~denied to the extent specified~~ Except as provided in the
30 articles of incorporation or, ~~if the articles of incorporation~~
31 ~~so provide, by the bylaws. Unless so limited, enlarged, or~~
32 ~~denied, each member, regardless of class, shall be entitled to~~
33 one vote on each matter submitted to a vote of members.

34 Sec. 7. Section 504.805, subsection 1, Code 2015, is amended
35 to read as follows:

1 1. The articles or bylaws of a corporation ~~must~~ may specify
 2 the terms of directors. If the term is not specified in the
 3 articles or bylaws, the term of a director is one year. Except
 4 for designated or appointed directors, and except as otherwise
 5 provided in the articles or bylaws, the terms of directors
 6 shall not exceed five years. ~~In the absence of any term~~
 7 ~~specified in the articles or bylaws, the term of each director~~
 8 ~~shall be one year.~~ Directors may be elected for successive
 9 terms.

10 Sec. 8. Section 504.825, Code 2015, is amended to read as
 11 follows:

12 **504.825 Quorum and voting.**

13 1. Except as otherwise provided in this chapter, or the
 14 articles or bylaws of a corporation, a quorum of a board of
 15 directors consists of a majority of the directors in office
 16 immediately before a meeting begins.

17 2. The articles or bylaws shall not authorize a quorum of
 18 fewer than one-third of the number of directors in office.

19 ~~2.~~ 3. If a quorum is present when a vote is taken, the
 20 affirmative vote of a majority of directors present is the act
 21 of the board unless a greater vote is required by this chapter,
 22 the articles of incorporation, or bylaws ~~require the vote of~~
 23 ~~a greater number of directors.~~

24 4. A director who is present at a meeting of the board
 25 of directors when corporate action is taken is considered to
 26 have assented to the action taken unless any of the following
 27 applies:

28 a. The director objects at the beginning of the meeting, or
 29 promptly upon arrival, to holding the meeting or transacting
 30 business at the meeting.

31 b. The director dissents or abstains from the action and any
 32 of the following applies:

33 (1) The dissent or abstention is entered in the minutes of
 34 the meeting.

35 (2) The director delivers notice in the form of a record of

1 the director's dissent or abstention to the presiding officer
2 of the meeting before the meeting's adjournment or to the
3 corporation promptly after adjournment of the meeting.

4 5. The right of dissent or abstention is not available to a
5 director who votes in favor of the action taken.

6 Sec. 9. Section 504.831, Code 2015, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 2A. In discharging board or committee
9 duties, a director shall disclose, or cause to be disclosed,
10 to the other board or committee members information which
11 the director knows is not already known by them but is known
12 by the director to be material to the discharge of their
13 decision-making or oversight functions, except that disclosure
14 is not required to the extent that the director reasonably
15 believes that doing so would violate a duty imposed under law,
16 a legally enforceable obligation of confidentiality, or a
17 professional ethics rule.

18 Sec. 10. Section 504.834, Code 2015, is amended to read as
19 follows:

20 **504.834 Loans to or guarantees for directors and officers.**

21 1. A corporation shall not lend money to or guarantee the
22 obligation of a director or officer of the corporation.

23 2. This section does not apply to the situation where the
24 director or officer is a full-time employee of the corporation
25 and involves any of the following:

26 a. An advance to pay reimbursable expenses reasonably
27 expected to be incurred by a director or officer.

28 b. An advance to pay premiums on a policy of life insurance
29 if the advance is secured by the cash value of the policy.

30 c. Advances pursuant to part 5.

31 d. Loans or advances pursuant to employee benefit plans.

32 e. A loan secured by the principal residence of an officer.

33 f. A loan to pay relocation expenses of an officer.

34 3. The fact that a loan or guarantee is made in violation of
35 this section does not affect the borrower's liability on the

1 loan.

2 Sec. 11. Section 504.854, subsection 3, paragraph a,
3 subparagraph (2), Code 2015, is amended to read as follows:

4 (2) If there are fewer than two disinterested directors,
5 by the vote necessary for action by the board in accordance
6 with section 504.825, subsection 2 3, in which authorization
7 directors who do not qualify as disinterested directors may
8 participate.

9 Sec. 12. Section 504.1104, Code 2015, is amended to read as
10 follows:

11 **504.1104 Articles of merger.**

12 1. After a plan of merger is has been adopted and approved
13 by the board of directors, and if as required by section
14 504.1103, by the members and any other persons, the surviving
15 or acquiring corporation shall deliver to the secretary of
16 state this chapter, articles of merger setting shall be signed
17 on behalf of each party to the merger by an officer or other
18 duly authorized representative. The articles shall set forth
19 all of the following, as applicable:

20 1. a. The plan of names of the parties to the merger.

21 2. b. If approval of members was not required, a statement
22 to that effect and a statement that the plan was approved
23 by a sufficient vote of the board of directors articles of
24 incorporation of the survivor of a merger are amended, or if
25 a new corporation is created as a result of the merger, the
26 amendments to the articles of incorporation of the survivor or
27 the articles of incorporation of the new corporation.

28 3. c. If the plan of merger required approval by the
29 members was required, both of the following: of a domestic
30 nonprofit corporation that was a party to the merger, a
31 statement that the plan was duly approved by the members and,
32 if voting by any separate voting group was required, by each
33 such separate voting group, in the manner required by this
34 chapter and the articles of incorporation or bylaws.

35 a. The designation, number of memberships outstanding,

~~1 number of votes entitled to be cast by each class entitled to
2 vote separately on the plan, and number of votes of each class
3 indisputably voting on the plan.~~

~~4 b. Either the total number of votes cast for and against the
5 plan by each class entitled to vote separately on the plan or
6 the total number of undisputed votes cast for the plan by each
7 class and a statement that the number of votes cast for the
8 plan by each class was sufficient for approval by that class.~~

9 d. If the plan of merger did not require approval by the
10 members of the domestic nonprofit corporation that was a party
11 to the merger, a statement to that effect.

12 ~~4. e.~~ If approval of the plan by some person or persons
13 other than the members of the board is required pursuant to
14 section 504.1103, subsection 1, paragraph "c", a statement that
15 the approval was obtained.

16 f. As to each foreign nonprofit corporation or eligible
17 entity that was a party to the merger, a statement that the
18 participation of the foreign corporation or eligible entity
19 was duly authorized as required by the organic law of the
20 corporation or eligible entity.

21 2. Terms of the articles of merger may be dependent on facts
22 objectively ascertainable outside the articles in accordance
23 with section 504.111, subsection 12.

24 3. Articles of merger must be delivered to the secretary
25 of state for filing by the survivor of the merger and shall
26 take effect at the effective time provided in section 504.114.
27 Articles of merger filed under this section may be combined
28 with any filing required under the organic law of any domestic
29 eligible entity involved in the transaction if the combined
30 filing satisfies the requirements of both this section and the
31 other organic law.

EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

BILL'S PROVISIONS — FOR-PROFIT AND NONPROFIT CORPORATIONS.

1 This bill amends a number of provisions affecting for-profit
 2 and nonprofit corporations. The bill provides that a
 3 registered agent for a domestic for-profit or nonprofit
 4 corporation may be a domestic limited liability company and for
 5 a foreign for-profit or nonprofit corporation may be a foreign
 6 limited liability company (Code sections 490.501 and 504.501).

7 BILL'S PROVISIONS — NONPROFIT CORPORATIONS. The bill's
 8 other provisions relate only to nonprofit corporations.
 9 The bill provides for filing procedures (Code section
 10 504.111) and the filing of articles of merger (Code section
 11 504.1104). The bill provides for the powers of a nonprofit
 12 corporation, including by allowing it to serve as both a
 13 trustee and beneficiary of a trust (Code section 504.302). It
 14 also provides for the powers and duties of members and its
 15 delegates as well as its directors and officers. This includes
 16 requirements relating to meetings of delegates (Code section
 17 504.701), member voting (Code section 504.712), the terms of
 18 directors (Code section 504.805), the voting of directors (Code
 19 section 504.825), the duty of directors to disclose information
 20 material to corporate action (Code section 504.831), and loans
 21 made by a nonprofit corporation to full-time directors or
 22 officers (Code section 504.834).

23 BACKGROUND. The model nonprofit corporation Act (MNCA)
 24 as drafted by the American Bar Association was enacted by
 25 the general assembly in 2004 Iowa Acts, ch 1049, codified
 26 in Code chapter 504, and now referred to as the "Revised
 27 Iowa Nonprofit Corporation Act" (Code section 504.101). A
 28 nonprofit corporation is required to file a number of items
 29 with the secretary of state including articles of incorporation
 30 (subchapter I, part 2). It is managed by a board of directors
 31 and operated by its officers and employees. Instead of
 32 shareholders, the corporation may, but is not required to,
 33 have members who may exercise their powers through delegates,
 34 including the power to elect directors (Code sections 504.141
 35 and 504.641).